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SUBJECT: SUPREME COURT SHAKE-UP IN PARAGUAY

11. (SBU) SUMMARY: Via a controversial political deal between opposition parties, the Senate elected August 20 a new Supreme Court Justice to fill a two-year old vacancy and rejected reconfirmation of two Supreme Court Ministers. With three vacancies at stake, the Colorado Party, UNACE and a several Liberal Party senators cut a deal. The pending vacancy went to the Colorado Party and the two new vacancies will go to UNACE and the Liberal Party. The newly elected justice, Agustin Lovera Canete, hails from the Colorado Party, but Lugo has five business days (through August 28) to accept or veto his nomination. If Lugo accepts Lovera Canete's nomination, the Colorados will lock up six of nine Supreme Court votes. END SUMMARY.

THE SUPREME COURT'S ROLE IN CORRUPTION

12. (SBU) Because the Supreme Court is the last resort for the country's most controversial political issues, the political parties squabble to ensure that the justices represent and safeguard their interests. Political control of the Supreme Court is critical to politicians' ability to secure impunity for crimes committed. To have friends on the Supreme Court is golden, and those friendships are trafficked for big benefits. The Court's presidency and vice presidencies are fundamental to political control of the Court, and the Colorados have controlled those positions since 2004. In the last five years, the Colorados also presided over the Court's constitutional chamber. (NOTE: This Chamber is famous for making controversial and arbitrary political decisions and will soon have to decide whether to allow ex-President Duarte Frutos to occupy his seat in the Senate. For Lugo's allies, gaining control of the Constitutional Chamber is fundamental to preventing possible impeachment charges against Lugo. Currently there are no such charges. END NOTE).

OPTIONS FOR REFORM

13. (U) Popular consensus supports reforming Paraguay's corrupt judiciary, and there is widespread support for removing all current Supreme Court justices. The 1992 constitution intended to improve the administration of justice, but the mechanism to elect the justices led to political influence. Per the Constitution, the Council of Magistrates, a political body comprised of representatives from the judicial, executive and legislative branches, plus several lawyers and law professors, submits a slate of three candidates to the Senate. The Senate must choose one of the three candidates to submit to the President, and the President must accept or veto the candidate within five days.

14. (SBU) During the April 2008 national elections, the major

political parties agreed that a constitutional amendment was necessary to bring about judicial reform. However, Lugo's "trial balloon" mention of a constituent assembly was not received with enthusiasm, and most analysts believe that Lugo now has too many other political challenges to expend political capital on a constituent assembly election. Lugo would need a 2/3 majority in both chambers of Congress to call a constituent assembly, which he does not have. The alternative, then, is a political agreement by the political parties to "renovate" the Court by replacing current ministers with substitutes, as President Duarte did in 2003 when six of the nine Supreme Court justices were replaced. Lugo's weakness is that his alliance does not have a majority in the Senate, and he has been unable to make a deal with other parties. (NOTE: The Senate has 45 members, of which only 17 belong to Lugo's alliance. END NOTE).

THE LEGAL DEBATE OVER WHEN A JUDGE MUST RETIRE

15. (U) Article 252 of the Constitution provides that all judges (the Supreme Court is not specifically mentioned) must be reconfirmed for two five-year periods to gain tenure in their positions. Article 261, which deals specifically with the Supreme Court, provides that the high court's justices can be removed only by impeachment and that they remain on the Court until they reach age 75. Interpretation of the two articles has led to heated debate. Many politicians argue that Supreme Court justices are appointed for five years and then must step down or be reconfirmed. Some argue that a reconfirmation in a lesser judicial position counts toward tenure on the Supreme Court. These constitutional ambiguities are decided by the Supreme Court's constitutional chamber.

16. (U) With all eight justices' constitutional terms expired, six justices presented petitions to the Court's constitutional chamber seeking tenure. The Court gave all six justices (Antonio Fretes, Victor Nunez, Alicia Pucheta, Raul Torres Kirmser, Sindulfo Blanco and Oscar Bajac) tenure until age 75. The two remaining justices, Cesar Garay (Colorado) and Jose Altamirano (Beloved Fatherland), informed the Senate that their terms expired and sought Senate reconfirmation. The Senate rejected their reconfirmation August 20, which automatically vacates two more positions on the Supreme Court.

LUGO'S EFFORTS AT JUDICIAL REFORM

17. (SBU) Lugo's cornerstone campaign promise was to end corruption and reform the judiciary. In fact, Lugo catapulted himself into the political arena when he led a massive protest in 2006 against corruption and political meddling in the Supreme Court. Since taking power August 15, 2008, Lugo made a few attempts to begin discussions about judicial reform. However, his first such attempt failed when Lugo called an extraordinary Senate session January 22 to vote on a long-standing Supreme Court vacancy but then could not achieve quorum. (NOTE: The Court has been working with only eight judges since June 2007. END NOTE). Two Senators from the Liberal Party, which is part of Lugo's political alliance, refused to attend the session and thus prevented quorum. Because the political parties did not support Lugo's attempt, momentum to renovate the Supreme Court lost steam. February 9 Lugo accused the Liberals, Colorados, and Oviedistas of trumping his plan to create a Supreme Court that is independent, uncorrupted, and free of politicians' intrusions.

18. (SBU) The Senate finally scheduled a vote on the Supreme Court vacancy August 20. The Colorado and UNACE parties, with some Liberal Party support, elected Colorado Agustin Lovera Canete August 20 to the court. At the same time, the Senate rejected reconfirmation of Ministers Garay and Altamirano. The next half of the political deal will give the two new vacancies to UNACE and the Liberal Party. President Lugo has until August 28 to accept or veto Lovera Canete's designation. If Lugo accepts Lovera Canete's nomination, the Colorados will lock up six of nine Supreme Court votes. If he rejects Lovera Canete, the Magistrate Council will

begin the process anew by forming a new slate of candidates.

COMMENT

19. (SBU) The country needs a judicial power that guarantees the rule of law. The current Supreme Court, widely (and correctly) viewed as corrupt, focuses more on politics and personal interests than legal issues. While the constitution provides for judicial independence and attempts to protect the Court from political influence by having justices serve until age 75, political interference in the courts is the norm. The administration of justice has become distorted and citizens have lost confidence in the institution. For the foreseeable future, judicial reform will remain one of Lugo's most pressing, and most difficult, challenges. END COMMENT.
AYALDE